



Billing Code: 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

FWS–R8–ES–2012–N177

[FF08E00000-FXES11120800000F2-123-F2]

Application from Marys River Ranch, Elko County, Nevada, for an Enhancement of Survival Permit; Safe Harbor Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: In response to an application from Marys River Ranch (applicant), the Fish and Wildlife Service (we, the Service) is considering issuance of an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). The enhancement of survival permit application includes a proposed safe harbor agreement (SHA) between the applicant and the Service. The proposed SHA provides for voluntary habitat restoration, maintenance, or enhancement activities to facilitate the repatriation and recovery of Lahontan cutthroat within the enrolled property.

The proposed duration of both the SHA and permit is 50 years. The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA).

The basis for this determination is contained in an environmental action statement, which also is available for public review.

DATES: Written comments must be received by 5 p.m. on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Written comments should be sent to Edward D. Koch, State Supervisor, by U.S. mail; or hand delivered to the Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; or faxed to 775–861–6301 (for further information and instructions on the reviewing and commenting process, see **Availability of Documents** section below).

FOR FURTHER INFORMATION CONTACT: Chad Mellison, Fish and Wildlife Biologist, at the address shown above or by telephone at 775–861–6300. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the permit application, the environmental action statement, or the full text of the proposed SHA, including a map of the proposed permit area, references, and description of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

Background Information

Under a safe harbor agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA (16 U.S.C. 1531 *et seq.*). Safe harbor agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the ESA, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through safe harbor agreements are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(c) and 17.32(c). An enhancement of survival permit allows any necessary future incidental take of species above the

mutually agreed upon baseline conditions for the species, as long as the take is in accordance with the terms and conditions of the permit and accompanying agreement.

Proposed Safe Harbor Agreement for Lahontan cutthroat trout

The primary objective of this proposed SHA is to encourage voluntary habitat restoration, maintenance, or enhancement activities to benefit Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*). The SHA would cover conservation activities to create, maintain, restore, or enhance habitat for Lahontan cutthroat trout and achieve species' recovery goals. These actions, where appropriate, could include (but are not limited to): (1) Restoration of riparian habitat and stream form and function; (2) variation of stocking rates for livestock (number/density of animals per unit area); (3) repair or installation of fences to protect existing or created habitat from livestock disturbance; (4) control of nonnative fish species; and (5) installation of screens on irrigation diversions as well as facilitation of the implementation of other objectives recommended by the Lahontan Cutthroat Trout Recovery Plan (Service 1995). The overall goal of the SHA is to produce conservation measures that are mutually beneficial to the applicant and the long-term existence of Lahontan cutthroat trout. Based upon the probable species' response time for Lahontan cutthroat trout, the Service estimates it will take 5–10 years of implementing the planned conservation measures to fully reach a net conservation benefit; some level of benefit would likely occur within a shorter time period. After maintenance of the restored/created/enhanced Lahontan cutthroat trout habitat on the

property for the agreed-upon term, the applicant may then conduct otherwise lawful activities on the property that result in the partial or total elimination of the habitat improvements and the taking of Lahontan cutthroat trout. However, the restrictions on returning a property to its original baseline condition include: (1) The applicant must demonstrate that baseline conditions were maintained during the term of the SHA and the conservation measures necessary for achieving a net conservation benefit were carried out; and (2) the Service will be notified a minimum of 60 days prior to the activity and given the opportunity to capture, rescue, and/or relocate any Lahontan cutthroat trout.

The Service has made a preliminary determination that approval of the proposed SHA qualifies for a categorical exclusion under NEPA (23 CFR 771.117), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). We explain the basis for this determination in an environmental action statement that is available for public review. Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comments

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit, including the identification of any aspects of the human environment not already analyzed in our environmental action statement.

Further, we specifically solicit information regarding the adequacy of the SHA as measured against our permit issuance criteria found in 50 CFR 17.22(c).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment--including your personal identifying information--may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Service provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, the proposed SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the applicant for take of the Lahontan cutthroat trout incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

References Cited

A complete list of all references cited in this document is available from the Nevada Fish and Wildlife Office (see **ADDRESSES**).

Dated: _September 4, 2012_____

Edward D. Koch,
State Supervisor,
Nevada Fish and Wildlife Office,
Reno, Nevada.

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